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IN THE

Supreme Court of the United States

OCTOBER TERM, 1952.

No. 490

IRENE B. WHETSTONE, *Petitioner,*

vs.

ERNEST J. SAUBER, Director of Internal Revenue,
Respondent.

PETITION OF IRENE B. WHETSTONE FOR REHEARING OF THE ORDER DENYING HER PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

IRENE B. WHETSTONE, *Pro se.*

The Scheffer Press, Inc.—ANdover 3-6850

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To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

Petitioner, Irene B. Whetstone, respectfully prays this Court for rehearing of its order entered February 2, 1953, denying her petition for a writ of certiorari to the United States Court of Appeals for the Seventh Circuit, filed December 8, 1952, as Docket 490.

Rehearing is urged upon substantial grounds not previously presented by petitioner, including an intervening circumstance of controlling effect. Such grounds have to do with judicial authority as qualified by paragraph 3 of Article VI of the Constitution, which reads in part:

> "The senators and representatives before mentioned, and the members of the several State legis-

latures, and all executive and judicial officers, both of the United States and of the several States, shall be bound by oath or affirmation to support this Constitution; * * *"

It is indisputably clear that the Constitution requires all Federal justices and judges, as officers of the United States Government, to take an oath to support and defend that instrument. If a prospective officer of the Federal Government were to refuse to take that oath at the time of induction into office he would not be acceptable, since the Constitution, the source of the authority conferred upon him, requires such oath. His refusal would be a repudiation of the very authority he seeks to acquire.

The authority vested in an officer of the United States Government is therefore definitely qualified by this requirement, that he support and defend the Constitution. *That is the law.* If refusal to take this oath renders a prospective officer of the United States Government ineligible to serve, his failure, after taking such oath, to fulfill its undertakings, likewise operates to annul the authority he has falsely assumed; otherwise requiring this oath would be an empty gesture. Attempts to minimize the obligatory nature of the undertakings of the oath required of a judicial officer are not justified. The Constitution provides that "all * * * judicial officers * * * shall be bound * * * to support this Constitution". There are no alternatives or exceptions here.

Ground 1, therefore, in the light of those constitutional requirements discussed in the foregoing paragraphs, is summarized as follows:

That petitioner, as defendant in an action in which unconstitutional measures have been and are being employed against her to deprive her of her liberty, has a

right to expect the Justices of this Court, in view of the undertakings of their respective oaths of office, to exercise their judicial authority to prevent an invasion of her constitutional rights and immunities. Her petition for writ of certiorari should be granted to enable this Court to adjudicate the important Constitutional issues it presents.

Petitioner submits *that the right to exercise discretionary power, as conferred by statutory enactment, does not relieve a judicial officer of the undertakings of his oath of office, required of him by the Constitution.* It is petitioner's right to expect this Court under *all* circumstances to support and defend the Constitution. A constitutional right is a heritage shared in common by all citizens, and it should never be administered by discretionary power to the advantage of one citizen today and to the disadvantage of another tomorrow.

A Federal Judge Transgresses His Oath of Office When He Arbitrarily Withholds Adjudication of Substantial Constitutional Issues.

The first responsibility of a judicial officer, according to the undertakings of his oath of office, is to support and defend the Constitution. Where could he be expected to apply such undertakings except in connection with the judicial function—the adjudication of controversial issues? *By no other means may constitutional rights and immunities be preserved.* Where an appellant, on appeal, raises an issue which includes a constitutional question, particularly one which indicates that a constitutional right or immunity has been invaded, or is threatened with invasion, such officer transgresses the undertakings of his oath if he withholds adjudication of such an issue.

When the judges of the United States Court of Appeals for the Seventh Circuit arbitrarily withheld adjudication of the constitutional issues raised by your petitioner on appeal to that court, they sanctioned unconstitutional procedures in the District court, including:

(1) The issuance of the warrant for petitioner's arrest where there was no "probable cause".

(2) The demand for compulsory self-disclosures of the defendant (your petitioner) who was in court under arrest for alleged violation of a Federal statute.

(3) Denial of due process by that court's refusal to grant a hearing on defendant's answer to the charge of violating a Federal statute.

(4) Denial of due process by its unlawful dismissal of petitioner's suits in equity establishing defenses to the action in which she was charged with violating a Federal statute, and in which she had been denied a hearing on her Answer to such charge.

(5) Denial of due process when it denied defendant (your petitioner) the right to defend or object in open court.

(6) Demand for compulsory self-disclosures of defendant as the price for obtaining her liberty, after she was committed for an offense defined in the Criminal Code and listed therein under "Crimes and Offenses".

And, the United States Court of Appeals for the Seventh Circuit itself denied petitioner "due process of law" when it failed *to take notice,* as the law requires*, of the issues raised by her on appeal to that court, pertaining to the lack of jurisdiction of the District court and the failure of the petition for defendant's arrest to charge an offense cognizable as such in the law.

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*Rule 12 (b) (2) of the Rules of Criminal Procedure, and Rule 12 (h) of the Rules of Civil Procedure.

Petitioner submits that the elaborate provision for the safekeeping of that time-honored document, the Constitution of the United States of America, now sealed in a chamber of helium and stored in a special vault in the Government archives, represents but an insincere rite, if our Federal courts may ignore and abrogate the mandates of the Constitution, and violate at will its limitations and restrictions. The failure of an officer of the United States Government to fulfill the undertakings of his oath of office, to support the Constitution, cannot be rationalized.

To prevent the subversion of the Constitution, this Court should grant the petition for writ of certiorari, urged herein by petitioner, in order to exemplify greater respect for that instrument, and to emphasize the need for closer adherence to its mandates.

The Mandate Issued by the United States Court of Appeals for the Seventh Circuit, Which Will Operate to Deprive Petitioner of Her Liberty, Is Unsupportable in Law.

Since the filing of the petition herein for writ of certiorari, a mandate was issued in this action, February 7, 1953, by the United States Court of Appeals for the Seventh Circuit.

Petitioner submits that this mandate is as spurious and invalid as though it had been issued by a court to whom the cause had never been presented for review. *The decree entered in this action* by the United States Court of Appeals for the Seventh Circuit and reported at 199 F. 2d 520 *is in no sense an adjudication of any of the substantial issues raised by appellant on appeal.* Those issues have been meticulously avoided by both opposing counsel and the courts. These evasive practices, and the omission of all reference to the substantial issues presented by appellant in her points relied upon on appeal, prompt one

to the conclusion that such decree is but a device in a covinous attempt to thwart justice and bury the facts in the ambiguities of a decision directed to fictitious issues.

The function of a reviewing court is to decide the issues *raised by appellant* on appeal. If the court withholds determination of such issues it cannot be said to have adjudicated the action.

Since the United States Court of Appeals for the Seventh Circuit did not adjudicate any of the substantial issues raised by appellant on appeal, the action was not adjudicated, and the mandate is without foundation in law.

Petitioner further submits that her brief on appeal to the United States Court of Appeals for the Seventh Circuit clearly set forth the constitutional issues which are enumerated herein in a foregoing paragraph, and it also cited controlling decisions of this Court. Her brief was a plea to the judges of the Court of Appeals to exercise their judicial authority in support and defense of the Constitution. When the judges of that court arbitrarily withheld adjudication of those constitutional issues, and ignored the pertinent decisions of this Court, they transgressed the undertakings of their oaths of office and forfeited their authority under the terms of the Constitution. Any action taken by that court thereafter was a usurpation of power.

Ground 2 is therefore predicated upon the fact that a mandate was issued by the United States Court of Appeals for the Seventh Circuit, on February 7, 1953, and its issuance constitutes an intervening event of controlling effect, since, as an unsupportable prescript, it will operate to deprive your petitioner of her liberty without due process of law (without adjudication of the issues raised on appeal). The Justices of this Court are legally and morally obligated

to declare this mandate void, since it is not based upon an adjudication of the action in which it is entered, and, it seeks to annul the fundamental principles of liberty and justice as established by the Fourth and Fifth Amendments to the Constitution, which the Justices of this Court have taken oath to support and defend.

The following decisions by this Court support your petitioner's position as to the obligatory nature of the oath of allegiance to the Constitution:

Marbury v. *Madison,* 1 Cranch (U.S.) 137, 180
Cohens v. *Virginia,* 6 Wheat. (U.S.) 264, 381
Ableman v. *Booth,* 62 U. S. 506, 524
Hayburn Case (Report of the Judges), 2 Dall. (U.S.) 409.

Petitioner submits that when a Federal court arrests a citizen where there is no "probable cause", denies a hearing on her Answer, and opportunity to defend in open court; when it resorts to coercion to compel self-disclosures to be used against her, commits her into custody, to remain until she makes such self-disclosures; such proceedings are but one step removed from the secret trial, the forced confessions and the concentration camp. The Justices of this Court should ask themselves if they are willing, by lending their consent, to promote such a program of surrender to the forces of oppression.

Wherefore, your petitioner respectfully prays that this Court reconsider its order denying her petition for a writ of certiorari to the United States Court of Appeals for the Seventh Circuit, and she prays that it grant said petition; and she appeals to this Court to review the Record of proceedings in the lower courts and pass upon the issues which petitioner has presented, to the end that the Constitution,

which the officers of this Court are required to support, may be preserved, and petitioner's rights thereunder protected from invasion.

Respectfully submitted,

IRENE B. WHETSTONE,
Pro se

State of Illinois }
County of Cook } ss.

This is to certify that the foregoing petition is presented in good faith, that it is not interposed for purposes of delay, but it is believed to be well founded in law and fact, and it is restricted to (1) grounds which, though available to petitioner, were not previously presented, and (2) grounds confined to intervening event of controlling effect.

Irene B. Whetstone

Subscribed and sworn to before me
this 16th day of February, 1953

Mary Anderson
Notary Public

(Seal)

City of Washington
District of Columbia

Irene B. Whetstone, a citizen of the United States of American, residing at 9820 Vanderpoel Avenue, Chicago, Illinois, being first duly sworn, deposes and says, that. service was made upon the respondent (Ernest J. Sauber) by today mailing a copy of the foregoing petition, by registered mail, addressed to his attorney, the Honorable Walter J. Cummings, Solicitor General of the United States, Department of Justice, Washington, D. C.

Irene B. Whetstone

Subscribed and sworn to before me
this 23 day of February, 1953.

Mary Whiston
Notary Public

Service Acknowledged

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